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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 76-1701

TENNESSEE VALLEY AUTHORITY,
Petitioner,

v.

HIRAM G. HILL, JR., ET. AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF OF AMICUS CURIAE, EASTERN BAND OF CHEROKEE INDIANS IN SUPPORT OF RESPONDENTS

BEN OSHEL BRIDGERS
P. O. Box 248
Sylva, North Carolina 28779
704-586-2121
Attorney for Amicus Curiae

HOLT, HAIRE & BRIDGERS, P.A.
Of Counsel

TENNESSEE LAW PRINTERS, P. O. Box 577, Knoxville, Tennessee, Phone 525-4202

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Respondents.

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

The Eastern Band of Cherokee Indians respectfully moves the Court for leave to file the attached brief of an amicus curiae in this case.

The Eastern Band previously filed an amicus brief with the Court in this case, but that brief addressed only the question whether the Court should grant certiorari to the Petitioner in this particular case. Since the Court has now granted certiorari the Eastern Band wishes to comment on the merits of the case presented by the

Petitioner and point out its own interest in the interpretation of the Endangereded Species Act proposed by the Petitioners.

This the daday of February, 1978.

HOLT, HAIRE & BRIDGERS, P.A.

BY:
Ben Oshel Bridgers
Attorneys for Amicus Curiae
P. O. Box 248
Sylva, NC 28779
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BRIEF OF AMICUS CURIAE, EASTERN BAND OF CHEROKEE INDIANS IN SUPPORT OF RESPONDENTS

The Eastern Band of Cherokee Indians is a federally recognized Indian tribe, occupying a reservation located in the mountains of western North Carolina. Prior to the Treaty of New Echota in 1835 and the cession of their remaining lands east of the Mississippi River, the Cherokees had resided in Tennessee along the Little Tennessee Valley, the site of the Tellico Dam, which is the subject of the present lawsuit.

This Valley contains a number of historical and archeological sites important to Cherokee culture and heritage. Within an eight mile area are found two eighteenth century Anglo-American sites (Fort Loudoun and Tellico Blockhouse), four "overhill" Cherokee town sites (Chota/Tanasi, Toqua, Tommotly and Tuskegee) and archeological sites of the Late Mississippian era (Toqua, 1330 - 1550 A.D.), Early Mississippian era (Martin Farm, 900 - 1300 A.D.), Middle Woodland era (Iceland Bottom, 300 - 700 A.D.), Early Woodland era (Bacon Bend, Patrick site, Calloway Island, 500 B.C. - 300 A.D.), Late Archaic era (Patrick, Icehouse Bottom and Harrison Branch, 2500 - 1000 B.C.) and Middle to Early Archaic era (Thirty Acre Island, Icehouse Bottom, Calloway Island, Howard site, 7500 - 4500 B.C.). Each of these sites could conceivably be protected by the National Historical Preservation Act.[1]

In his brief, the Solicitor for the Secretary of the Interior points out that the Petitioner's arguments regarding the Endangered Species Act "set a dangerous precedent for agencies to exempt their on-going projects from compliance with other 'consultation' laws such as the Historic Preservation Act."[2] Indeed this case appears to present just such precedent for this very act. In addition to the question of the Endangered Species Act, there is some doubt that TVA complied with the Historic Preservation Act. That Act required consultation[3] by a federal agency, such as TVA, prior to construction to determine adverse effect of construction on historic sites. Such consultation appears not to have been done for all of these sites and a number of historical and archeological sites

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[1] 16 U.S.C. §§470 et. seq. (1970).

[2] Brief for the Petitioner, Appendix, p. 5A.

[3] 16 U.S.C. §470 f.

eligible for the Historic Register will be destroyed, including all but three of the sites listed in the previous paragraph.

Such destruction is important to the Cherokee people because this is the last valley available with such historical and archeological remnants available for study and preservation.

The Eastern Cherokees also note the arguments provided by the Petitioner and amici curiae on behalf of the local governments within Monroe County, Tennessee, that the economic realities of this case support their interpretation of the Endangered Species Act. However, the Cherokees believe that most of the people in the Little Tennessee Valley have no idea of the extent of the historical and cultural significance of this Valley. The local residents quite naturally fear only the economic consequences portrayed to them by the Petitioners.

The North Carolina Cherokee Reservation is located in the Smoky Mountains adjoining the Blue Ridge Parkway. The economy of the Tribe is heavily dependent upon the tourist industry and many members of the Tribe are actively engaged in businesses on the Reservation. During 1977 some 8.6 million people came onto the Cherokee Reservation and spent approximately 20.5 million dollars in Cherokee. The success of the Cherokee people in the tourist industry is due to a number of factors, not the least of which are their ready access to the Parkway and being adjacent to a National Park which funnels tourists into Cherokee. Inasmuch as the Little Tennessee Valley contains some of the same geographical features, the Cherokees believe the potential for the economic development of the Little Tennessee Valley area is excellent.

Paralleling this litigation, the General Accounting Office conducted a study of the Tellico Project and issued a report in October 1977. The GAO Report found that the project area has potentially valuable alternative development options that have not been considered and the Report stated that "[N]umerous alternate uses exist for the Little Tennessee River if the reservoir is not completed.[4]

Because the Little Tennessee Valley is also adjacent to the Blue Ridge Parkway and the Cherokee historical and archeological sites lie along the river in close proximity, based on Cherokee's own experience in the tourist industry under similar geographical conditions, they conclude that the economic disaster portrayed by Petitioner is inaccurate and misleading. Based on the alternatives discussed in the GAO Report, there is every reason to believe the economy can grow in the Valley even if the Court denies the relief sought by Petitioners.

In short, the scope of historic preservation and endangered species could be dramatically short-circuited by the legal position of the Petitioner. The Cherokee people are sensitive to the goals of the Endangered Species Act since their own survival was a matter of serious concern in the last century.

It is implicit from the enactment of the National Historic Preservation Act and the Endangered Species Act that cultural and biological patterns of the past have value and are worth remembering. Obviously they can

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[4] GAO Report: "The TVA's Tellico Dam Project - Costs, Alternatives and Benefits." EMD - 77 - 58, Oct. 14, 1977 at p. 26.

best be remembered by keeping them visible and intact. By standing on the shoulders of the past we can see more clearly into our future.

For these reasons the Cherokee people ask the Court to enforce the Endangered Species Act and affirm the Sixth Circuit decision.

Respectfully submitted,

HOLT, HAIRE & BRIDGERS, P.A.

BY:

Ben Oshel Bridgers
P. O. Box 248
Sylva, North Carolina 28779
704-586-2121

Attorney for Amicus Curiae